

shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

#### § 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet with him or her to consider any or all of the following:

- (a) Simplification and clarification of the issues;
- (b) Scope of the hearing;
- (c) Stipulations and admissions of either fact or the content and authenticity of documents;
- (d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and
- (e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

#### § 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under § 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and if so, what sanctions are appropriate. Hear-

ings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order such joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

#### § 207.113 The record.

(a) *Definition of the record.* The record shall consist of—

- (1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;
  - (2) All orders, notices, and the recommended or initial determinations of the administrative law judge;
  - (3) Orders, notices, and any final determination of the Commission;
  - (4) Hearing transcripts, and evidence admitted at the hearing; and
  - (5) Any other items certified into the record by the administrative law judge.
- (b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his or her filing of the initial determination.

#### § 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following: